

Jonathan A. Dessaulles, State Bar No. 019439  
Ashley C. Hill, State Bar No. 032483

**DESSAULES LAW GROUP**

7243 North 16<sup>th</sup> Street  
Phoenix, Arizona 85020  
602.274.5400 tel.  
602.274.5401 fax

[jdessaulles@dessaulleslaw.com](mailto:jdessaulles@dessaulleslaw.com)

[ahill@dessaulleslaw.com](mailto:ahill@dessaulleslaw.com)

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Wayne Hiatt,

Plaintiff,

vs.

Sun City Festival Community Association, Inc.,  
d/b/a/ Sun City Festival, an Arizona non-profit  
corporation,

Defendant.

No.

**COMPLAINT**

Plaintiff alleges the following:

**PARTIES AND JURISDICTION**

1. Plaintiff Wayne Hiatt (“Hiatt”) resides in Maricopa County, Arizona.

2. Defendant Sun City Festival Community Association, Inc. (“SCF”), is an Arizona nonprofit corporation with its principal place of business in Phoenix, Arizona. Upon information and belief, Defendant SCF uses and operates under the trade name, Sun City Festival, and has done so at all times relevant hereto.

3. This action arises, in part, under the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601, *et seq.*, and, therefore, the Court has federal question jurisdiction pursuant to 28 U.S.C.

1 § 1331. The Court has supplemental jurisdiction over Hiatt’s state law claims under 28 U.S.C.  
2 § 1367.

3 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

4 **GENERAL ALLEGATIONS**

5 5. Hiatt owns a house within the physical boundaries of SCF and, as such, is a  
6 member of SCF and subject to its Declaration of Covenants, Conditions, and Restrictions (the  
7 “Declaration”).

8 6. The Declaration prohibits open garage doors and further provides garage doors  
9 “shall remain closed at all times except when entering or exiting the garage.”

10 7. SCF, however, has a lax enforcement attitude with respect to open garage doors of  
11 some owners. Hiatt’s neighbor, for example, is allowed to keep his garage door open while he is  
12 sitting in it and routinely hosts friends and neighbors inside his open garage.

13 8. Hiatt is a veteran who suffers from a disability. At all times relevant hereto, Hiatt  
14 has been handicapped within the meaning of 42 U.S.C. § 3601, *et seq.*, in that his disability  
15 effects a major life activity.

16 9. SCF has never denied or disputed that Hiatt has a disability.

17 10. Woodworking generally has an ameliorative effect on Hiatt’s disability. The only  
18 place on Hiatt’s property where he can engage in woodworking is inside his garage. Because the  
19 closed garage door often triggers his disability, however, Hiatt needs to keep his garage door  
20 open while he is woodworking inside the garage.

21 11. In November 2022, Hiatt submitted a request for accommodation under the FHA  
22 to keep his garage door open while he is inside the garage woodworking. Hiatt presented  
23 information showing he has a disability affecting his ability to be inside his garage with the door  
24 closed.

25 12. Hiatt’s request, if granted, would have afforded him the same benefits and  
26 privileges that other members, such as the neighbor across the street, seem to enjoy without

1 restrictions or conditions. Moreover, Hiatt's request, if granted, would simply give him the same  
 2 rights all other owners are given to engage in arts and crafts, such as woodworking, inside their  
 3 garage.

4 13. As explained on the Accommodation/Modification Verification Form Hiatt  
 5 submitted to SCF, at its request in order to have his requested accommodation considered:

6 Woodworking has become a great source of therapy for Wayne, it calms him and  
 7 helps him stay centered. I understand he has access to a workshop; however, it can  
 8 become overwhelming with the noise and amount of people in the workshop. He  
 9 can work there in small increments of time, but his garage is where he is most  
 comfortable. It is also a safe place for Wayne to be social without being  
 overwhelmed.

10 14. Allowing Hiatt to keep his garage door open when he is woodworking inside  
 11 would not pose an undue financial or administrative burden on SCF.

12 15. SCF did not respond to Hiatt's accommodations request for two months.

13 16. In a letter from its lawyer, Sarah McCue, dated January 25, 2023, SCF finally  
 14 responded to Hiatt's request to keep the garage door open when he is inside. A true and correct  
 15 copy of this letter is attached as Exhibit 1.

16 17. Ms. McCue denies Hiatt's requested accommodation for the following reasons:

- 17 a. "[I]t is unclear if what you are requesting is actually protected by the  
 18 FHA... The scale of the woodworking you are performing resembles  
 19 a commercial rather than a residential activity and appears beyond  
 the scope of the activity that the FHA protects."
- 20 b. "The request you have made – to be permitted to do woodwork in  
 your home garage with your garage door open – is not reasonable."
- 21 c. The CC&Rs "state that garage doors may not stay open."
- 22 d. Woodworking with open garage doors "results in unreasonable  
 23 levels of noise" and is "significantly disturbing the peace and quiet  
 enjoyment of other community members."
- 24 e. "It would be a fundamental alteration of the housing services  
 25 provided by Sun City to allow you to engage in conduct that is not  
 26 only contrary to the CC&Rs but that disturbs the peace and quiet  
 enjoyment of the community – intruding on the rights of both  
 current and prospective homeowners."

1       18. The reasons for denying Hiatt's requested accommodation are pretextual and  
2 unlawful under the FHA. Hiatt is not conducting woodworking in his garage as a commercial  
3 activity; he performs woodworking because of the positive effects it has had on his disability.

4       19. Upon information and belief, other owners are allowed to engage in woodworking  
5 inside their garage with the door open. An open garage door when Hiatt is woodworking in his  
6 garage merely affords him of the same rights and privileges enjoyed by other homeowners.

7       20. More generally, SCF generally does not enforce open garage door violations. On  
8 March 31, 2023, for example, Hiatt observed at least forty houses with open garage doors near  
9 his house. Upon information and belief, although Hiatt gets violation letters and fines for having  
10 his garage door open, other owners do not.

11       21. Hiatt, in response to Ms. McCue's letter, specifically requested documents and  
12 records suggesting that Hiatt's woodworking creates an "unreasonable level of noise" and is  
13 "significantly disturbing the peace and quiet enjoyment." Such records, if they exist, would  
14 constitute association records under A.R.S. § 33-1805 that must be produced to owners on their  
15 request.

16       22. SCF ignored Hiatt's request for such association records and did not respond  
17 within the ten business days statutorily allotted to it. Accordingly, Hiatt presumes that such  
18 records cannot exist for SCF to ignore its statutory obligation to produce records to members  
19 upon written request.

20       23. Notably, SCF did not challenge or question whether Hiatt suffered a disability that  
21 is protected under the FHA and did not ask for more information or documentation concerning  
22 the disability.

23       24. It would not constitute a "fundamental alteration of the housing services" provided  
24 by SCF to allow Hiatt to keep his garage door open when he is conducted woodworking  
25 activities inside.

26       25. Hiatt's request to keep his garage door open when inside is reasonable.

27. Hiatt incorporates the foregoing allegations as if fully set forth herein.

28. The Fair Housing Act, as amended, imposes affirmative duties on homeowner associations to make reasonable accommodations in rules, policies, practices, or services when necessary to afford disabled individuals an equal opportunity to the use and enjoyment of a dwelling.

29. The failure to perform these affirmative duties under the Fair Housing Act constitutes an act of discrimination.

30. To prevail on a claim under 42 U.S.C. § 3604(f)(3), a plaintiff must prove all of the following elements: (1) that the plaintiff or his associate is handicapped within the meaning of 42 U.S.C. § 3602(h); (2) that the defendant knew or should reasonably be expected to know of the handicap; (3) that accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling; (4) that the accommodation is reasonable; and (5) that defendant refused to make the requested accommodation.

31. 42 U.S.C. § 3602(h) defines a “handicap” to mean (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment.

32. Hiatt's conditions constitute a handicap under 42 U.S.C. § 3602(h).

33. SCF knew or reasonably should be expected to know about Hiatt's handicap.

34. Hiatt's requested accommodation would afford him an equal opportunity to use and enjoy the dwelling. His request would have put him on equal footing not only with owners who perform arts and crafts activities in their garages but also owners, such as his neighbor, who

1 routinely keeps his garage door open in violation of the same provision that SCF is attempting  
2 to enforce against Hiatt.

3 35. Hiatt's requested accommodation is reasonable.

4 36. SCF has refused the requested accommodation.

5 37. Hiatt has suffered damages as a direct and proximate result of SCF's actions.

6 38. Pursuant to 42 U.S.C. § 3613(c)(1), Hiatt is entitled to his actual and punitive  
7 damages, and as the Court deems appropriate, any permanent injunction or other order to  
8 enforce Hiatt's rights under the FHA.

9 39. Hiatt is entitled to his reasonable attorneys' fees and costs under 42 U.S.C.  
10 § 3613(c)(2).

11 **COUNT TWO**  
12 **(Violation of Arizona Fair Housing Act)**

13 40. Hiatt incorporates the foregoing allegation as if set forth fully therein.

14 41. The above allegations constitute a violation of A.R.S. § 41-1491.19(B).

15 42. Hiatt is entitled to actual and punitive damages.

16 43. Hiatt is also entitled to his reasonable attorneys' fees and court costs pursuant to  
17 A.R.S. §§ 41-1491.33 and 41-1491.36.

18 44. Hiatt is entitled to injunctive relief enjoining SCF from engaging in the  
19 discriminatory practices alleged herein.

20 WHEREFORE, Hiatt requests judgment as follows:

21 (A) Awarding judgment in Hiatt's favor and against SCF;

22 (B) The issuance of a permanent injunction against SCF prohibiting it from  
23 enforcing the open garage door deed prohibition against Hiatt;

24 (C) Awarding Hiatt his actual damages and punitive damages in amounts to be  
25 proven at trial;

1 (D) Awarding Hiatt his attorneys' fees and costs pursuant to 42 U.S.C.  
2 § 3613(c)(2), A.R.S. § 41-1491.33, and A.R.S. § 41-1491.36; and

3 (E) Such further relief as the Court deems appropriate.

4 DATED this 31<sup>st</sup> day of March 2023.

5 DESSAULES LAW GROUP

6  
7 By: /s/ Jonathan A. Dessauls

8 Jonathan A. Dessauls

9 Ashley C. Hill

10 *Attorneys for Plaintiff*  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26